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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/859,708	05/17/2001	David M. Shaw	12293-19	4131

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EXAMINER

TAYLOR, NICHOLAS R

ART UNIT PAPER NUMBER

2141

DATE MAILED: 01/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/859,708	SHAW, DAVID M.	
	Examiner	Art Unit	
	Nicholas R. Taylor	2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15, 16, 18 and 20-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15, 16, 18 and 20-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 15, 16, 18, and 20-25 have been presented for examination and are rejected.

Response to Arguments

2. Applicant's arguments filed 9/30/2005 with respect to claims 15, 16, 18, and 20-25 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 15, 16, 18, and 20-25 rejected under 35 U.S.C. 103(a) as being unpatentable over Goldszmidt et al. (US Patent 6,195,680) and Lumelsky et al. (US Patent 6,377,996).

5. As per claim 15, Goldszmidt teaches an apparatus, comprising:
a processor; a media player; (Goldszmidt, column 5, lines 26-31, and column 8, lines 19-23)

a program code module comprising code executable by the processor to carry out the following method steps:

as a media stream is being received from a first server and rendered by the media player (Goldszmidt, column 5, lines 54-59, and column 8, lines 19-23), determining whether the media stream is acceptable according to a given metric; (Goldszmidt, column 7, lines 10-45)

if the media stream is not acceptable, and as the media stream continues to be received, taking a given action to initiate delivery of the media stream from a second server;

receiving the media stream from the second server; and (Goldszmidt, column 7, lines 10-45)

when the given offset is reached, rendering in the media player the media stream received from the second server (Goldszmidt, column 8, lines 19-23).

Goldszmidt teaches switching the to the stream on the second server using buffers and advanced portions (Goldszmidt, column 14, lines 11-60), yet fails to specifically teach wherein the given action includes the steps of:

(a) creating a buffer; (b) receiving and caching in the buffer advanced portions of the media stream; (c) issuing a request to the second server to initiate delivery of the media stream at a given offset; and (d) rendering the advanced portions of the media stream.

Lumelsky teaches switching streaming media streams between a primary and a secondary stream (Lumelsky, column 5, line 55 to column 6, line 7, and figure 2) where

Art Unit: 2141

a buffer is used to cache the advanced portions of the stream (Lumelsky, column 6, lines 41-59) after a client request to initiate the second stream, and the advanced portion is rendered until the offset is reached (Lumelsky, column 7, lines 27-56).

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have combined Lumelsky and Goldszmidt to provide the stream switching of Lumelsky in the system of Goldszmidt, because doing so would enhance the playback to provide a smooth and uninterrupted stream at the client end (Lumelsky, column 6, lines 41-59).

6. As per claim 16, Goldszmidt-Lumelsky teaches the system further wherein the code is executable by the processor to initiate an instruction to the first server to cease transmission of the media stream before rendering the advanced portions of the media stream (Goldszmidt, column 9, lines 7-23, specifically figure 3a).

7. As per claim 18, Goldszmidt-Lumelsky teaches the system further wherein the code is executable by the processor to match data packets received from the first and second servers such that the media stream rendered in the media player appears continuous (Goldszmidt, column 9, line 61 to column 10, line 5, and column 10, lines 44-48).

Art Unit: 2141

8. As per claim 20, Goldszmidt-Lumelsky teaches the system further wherein the media stream is not acceptable if it is being thinned by the first server (Goldszmidt, column 9, lines 7-23).

9. As per claim 21, Goldszmidt-Lumelsky teaches the system further wherein the media stream is not acceptable if a given indication from the first server is received (Goldszmidt, column 7, lines 10-45).

10. As per claim 22, Goldszmidt-Lumelsky teaches the system further wherein the given indication is that the first server will be unavailable (Goldszmidt, column 7, lines 10-45).

11. As per claim 23, Goldszmidt-Lumelsky teaches the system further wherein the code executable by the processor determines that the second server has a response time that differs from a response time of the first server (Goldszmidt, column 10, lines 6-19).

12. As per claim 24, Goldszmidt-Lumelsky teaches the system further wherein the code executable by the processor determines whether the media stream is acceptable periodically as the media stream is being delivered (Goldszmidt, column 9, lines 7-23).

Art Unit: 2141

13. As per claim 25, Goldszmidt-Lumelsky teaches the system further wherein the code executable by the processor records given data associated with receipt of the media stream (Goldszmidt, column 5, lines 33-49).


Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Taylor whose telephone number is (571) 272-3889. The examiner can normally be reached on Monday-Friday, 8:00am to 5:30pm, with alternating Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3718.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nicholas Taylor
Examiner
Art Unit 2141


RUPAL DHARIA
SUPERVISORY EXAMINER